AUTHORIZING THE CITY ATTORNEY TO COOPERATE WITH THE LEAGUE OF CALIFORNIA CITIES, OTHER CITIES AND COUNTIES IN LITIGATION CHALLENGING THE CONSTITUTIONALITY OF ANY SEIZURE BY STATE GOVERNMENT OF THE CITY'S STREET MAINTENANCE FUNDS **RESOLUTION 2009-38**

WHEREAS, the current economic crisis has placed cities under incredible financial pressure and caused them to make painful budget cuts, including layoffs and furloughs of city workers, decreasing maintenance and operations of public facilities, and reductions in direct services to keep spending in line with declining revenues; and

WHEREAS, since the early 1990s the state government of California has seized over **$10 billion** of city property tax revenues statewide, now amounting to over $900 million each year, to fund the state budget even after deducting public safety program payments to cities by the state; and

WHEREAS, in his proposed FY 2009-10 budget the Governor has proposed transferring $1 billion of local gas taxes and weight fees to the state general fund to balance the state budget, and over $700 million in local gas taxes permanently in future years, immediately jeopardizing the ability of the City of Lafayette to maintain the City's streets, bridges, traffic signals, streetlights, sidewalks and related traffic safety facilities for the use of the motoring public; and

WHEREAS, the loss of almost all of the City's gas tax funds will seriously compromise the City's ability to perform critical traffic safety related street maintenance, including, but not limited to, drastically curtailing patching, resurfacing, street lighting/traffic signal maintenance, payment of electricity costs for street lights and signals, bridge maintenance and repair, sidewalk and curb ramp maintenance and repair, and more; and

WHEREAS, some cities report to the League of California Cities that they will be forced to eliminate part or all of their street maintenance operations while others will be forced to cut back in other areas (including public safety staffing levels) to use city general funds for basic street repair and maintenance. Furthermore, cities expect that liability damage awards will mount as basic maintenance is ignored and traffic accidents, injuries and deaths increase; and

WHEREAS, in both Proposition 5 in 1974 and Proposition 2 in 1998 the voters of our state overwhelmingly imposed restriction on the state's ability to do what the Governor has proposed, and any effort to permanently divert the local share of the gas tax would violate the state constitution and the will of the voters; and

WHEREAS, cities and counties maintain 81% of the state road network while the state directly maintains just 8%; and

WHEREAS, ongoing street maintenance is a significant public safety concern. A city's failure to maintain its street pavement (potholes filling, sealing, overlays, etc.), traffic signals, signs, and street lights has a direct correlation to traffic accidents, injuries and deaths; and

WHEREAS, according to a recent statewide needs assessment[1] on a scale of zero (failed) to 100 (excellent), the statewide average pavement condition index (PCI) is 68, or "at risk." Local streets and roads will fall to "poor" condition (Score of 48) by 2033 based on existing funding levels available to cities and counties.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF LAFAYETTE hereby directs the City Attorney to take all necessary steps to cooperate with the League of California Cities, other cities and counties in supporting litigation against the state of California if the legislature enacts and the governor signs into law legislation that unconstitutionally diverts the City's share of funding from the Highway Users Tax Account (HUTA), also known as the "gas tax," to fund the state general fund; and

RESOLVED FURTHER, that the city manager or clerk shall send this resolution with an accompanying letter from the mayor to the Governor and each legislator, informing them in the clearest of terms of the City's adamant resolve to oppose any effort to frustrate the will of the electorate as expressed in Proposition 5 (1974) and Proposition 8 (1998) concerning the proper use and allocation of the gas tax; and

RESOLVED FURTHER, that a copy of this Resolution shall be sent by the city manager or clerk to the League of California Cities, the local chamber of commerce, and other community groups whose members are affected by this proposal to create unsafe conditions on the streets of our City for pedestrians, bicyclists and motorists.

ADOPTED this _____ day of _____, 2009.

APPROVED:

_____
Don Tatzin, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk

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[1] *California Statewide Local Streets and Roads Needs Assessment*, Nichols Consulting Engineers, Chtd. (2008), sponsored by the League of California Cities, California State Association of Counties and County Engineers Association of California.

ATTACHMENT A

BUDGET CONFERENCE COMMITTEE TAKES LOCAL GAS TAX FOR TWO YEARS: PROPOSAL WOULD DEVASTATE CITY STREET MAINTENANCE AND TRAFFIC SAFETY

No Decision yet on Proposal to Borrow Local Property Taxes

Budget activities in the Capitol ended on Thursday with devastating news to local governments when the Budget Conference Committee approved taking two years of local Highway User Tax Account (HUTA) funds. This amounts to $986 million in FY 2009-10 and $750 million in FY 2010-11. The vote was party-line: Democrats "Aye", Republicans "No." The action by the Budget Conference Committee, if sustained by the legislature, will directly contradict limits placed on the legislature's use of HUTA funds in Proposition 5 in 1974 and Prop. 2 in 1998. The action also has tremendous implications for city budgets which have relied on this stable source of revenue for important transportation projects since the 1970s. The League will be delivering to the Governor and Legislature, an authoritative legal opinion questioning the constitutionality of the HUTA raid.

The committee rejected a Legislative Analyst's Office (LAO) proposal to borrow Prop. 42 (sales tax on gas) funds. The committee also approved the release of $700 million in remaining Prop. 1B local street and road funds, of which $258 million remains available for cities. No action has yet been taken by the committee on the Governor's proposal to borrow local property taxes under Prop. 1A. The committee also left open an LAO proposal to take half of the VLF money dedicated to local public safety. (See attached link for estimate of city-by-city impacts: http://www.californiacityfinance.com/HUTAprojFY10.pdf)

In Friday's Budget Conference Committee meeting, members received new trailer bill language from DOF that proposes borrowing funds through an ERAF shift to get around the maintenance of effort requirements. Because the members received the trailer bill language within minutes of the discussion, the committee closed down the meeting and continued the discussion on borrowing property taxes until some time over the weekend or Monday. (See attached link to Budget Conference Documents: http://sinet2.sen.ca.gov/budget/conf2009.html)

The committee meetings this week follow a great deal of activity by the League and city officials in fighting proposals to borrow local property taxes as well as take these funds.

LAO had proposed borrowing local HUTA revenues for one year, which is authorized by the Constitution, but this proposal was rejected during the discussion. While these funds go to transportation projects, if taken by the state, they will have implications beyond what they traditionally support. On Tuesday, the "Big City" mayors told Gov. Arnold Schwarzenegger that loss of these funds would impact public safety because cities would have to supplement transportation project needs from the General Fund.

Another ripple effect of the state taking or borrowing HUTA is the potential violation of city storm water National Pollutant Discharge Elimination System (NPDES) permits. A number of cities use their HUTA funds for street sweeping and street maintenance. In addition, many of the city storm water NPDES permits specifically state that the city must sweep the street a specified number of times per week and list specific maintenance projects in the permits.

If HUTA funds are taken, cities would be forced to backfill the funds required to do street sweeping and maintenance from other sources. Without the ability to fund street sweeping or maintenance, cities could fall out of compliance with their NPDES permit fairly quickly.

On Friday, June 5, a large transportation coalition sent the Governor a letter, calling the proposal to divert and/or borrow gas taxes to close the budget gap fiscally reckless. The League joined this coalition and has posted a copy of this letter on the League's Web site: http://www.cacities.org/resource_files/28102.June 2009 Joint CoalitionLetter No42Borrowing 6 5 09.pdf

While Thursday's action by the Conference Committee will have many severe consequences on local street and road programs, several things could alter this course:

1. The budget fight may bog down on other provisions, giving local government, transportation groups, affected local employees and local residents, time to rally opposition to change or reverse this proposal.
2. The Republicans have the ability to hold out with the two-thirds vote, but some Republicans on the committee indicated that they would support a one-year grab of these funds.
3. "Big-Five" discussion may alter the shape of the final deal (there has been some discussion on the need to increase state fees or gas taxes.)
4. The League's legal opinion on the unconstitutionality of this proposal will soon be shared with the Governor, and may change his mind about the viability of this proposal. (See attached link for legal opinion: http://www.cacities.org/HUTAopinion)
5. A lawsuit could be filed to seek an injunction while the courts review the constitutionality of this proposal.

League Officers Meet with Governor

On Wednesday, a majority of the League's executive officers came to Sacramento to meet with the Governor. Present at the meeting were Judy Mitchell, League President and Rolling Hills Estates Mayor; Jim Ridenour, Second Vice President and Modesto Mayor; Jim Madaffer, Immediate Past President and former San Diego City Council Member; Executive Director Chris McKenzie and Legislative Director Dan Carrigg.

It was a productive meeting and the officers reiterated our strong opposition to a budget based on borrowing, as well as to proposals to take Highway User Tax Account (HUTA), or gas tax, from cities as a revenue source for the state budget.

Executive Director McKenzie told the Governor that DOF's proposal to take the local share of HUTA is unconstitutional and that the League would provide him with an authoritative legal opinion on the matter in the near future (see above). The Governor seemed very interested in receiving the legal analysis that the League has completed on this matter. The Governor also noted the growing opposition to the Prop. 1A borrowing by Senate Republican Leader Dennis Hollingsworth (R-Murrieta) and Senate President Pro Tem Darrell Steinberg (D-Sacramento). This caused him to wonder if the Legislature is open to other cuts or steps to avoid it. The Governor said that he does not want to implement policies that would cause permanent harm to local government.

On June 10, President Mitchell and Executive Director McKenzie delivered a memo to the Governor outlining the impact of the proposed borrowing of Prop. 1A and the unconstitutional HUTA raid. A copy of that letter has been posted on the League's Web site: http://www.cacities.org/resource_files/28103.GovernorJune10.pdf.

Big City Mayors Meet with Governor

On Tuesday, a number of the "Big City" mayors met with the Governor, continuing their efforts from last week to lobby on budget issues. Wednesday's meeting included Sacramento Mayor Kevin Johnson, Los Angeles Mayor Antonio Villaraigosa, San Diego Mayor Jerry Sanders, Fresno Mayor Ashley Swearengin and Santa Ana Mayor Miguel Pulido. The mayors again told the Governor how cities would be devastated if the state borrows or takes local revenues for the state's budget.

Mayor Villaraigosa said that Los Angeles would be forced to lay off approximately 1,400 police officers if his city loses 8 percent of property taxes. San Diego, Mayor Sanders said they would have to cut an additional $75 million from the city budget beyond the $180 million they've already cut, if the state takes these local funds.

Save Your City Campaign

The League has been working against the proposal to borrow 8 percent of cities' share of property tax since it emerged. Fighting this borrowing proposal was the impetus behind the launch of the Web site, www.SaveYourCity.net, several weeks ago. The Web site's momentum has been tremendous, with close to 400 video testimonials uploaded on it.

This week, Assembly Member and Local Government Committee Chair Anna Caballero (D-Salinas) came out against borrowing local revenues and posted her own video communicating her stand. As former mayor of Salinas, the Assembly member knows first hand how this proposal would impact cities. Assembly Member Caballero is the first Democratic legislator to come out against borrowing.

Senate Republican Leader Dennis Hollingsworth (R-Murrieta) also posted a video this week on www.SaveYourCity.net saying that the Senate Republican Caucus is against borrowing Prop. 1A and that this is one of the worst types of borrowing because it affects public safety and vital services at the local level.

On Tuesday, June 9, when Senate President Pro Tem Darrell Steinberg (D-Sacramento) announced his budget plan, he also said that he and his fellow Democrats were against the Governor's proposal to borrow the almost $2 billion in local property taxes for the state's deficit. The Senate President Pro Tem proposes using the state's $4.5 billion reserve to close the $24 billion deficit.

Cities across California have continued to pass resolutions declaring a state of severe fiscal hardship. Since May 11, 236 cities have taken this action to communicate the devastation that proposals to borrow or take local government revenues would have on cities.

Assembly Speaker Outlines Revenue Generating Ideas

On Wednesday, Assembly Speaker Karen Bass (D-Los Angeles) said that she's seeking new revenue sources to help balance the budget without decimating programs. However, as reported in the *Sacramento Bee* on June 11, the Speaker did not comment on the specific options included in her proposal.

SUMMARY OF MAJOR BUDGET ITEMS AFFECTING CITIES
(Updated, June 16, 2009)

Borrowing Property Taxes under Prop 1A: The Department of Finance (DOF) has proposed to borrow local property taxes under Proposition 1A through an 8 percent across-the-board approach. The Legislative Analyst Office (LAO) and others are suggesting alternate formulas that in which enterprise special districts would lose their remaining property tax shares and the exemptions would be made for hardship situations. The Legislature is free to come up with other means of distributing the impacts among cities, counties and special districts. The plan to borrow $1.9 billion in local property taxes remains in play, but DOF seems to be running into legal problems imposed by maintenance of effort requirements associated with the American Reinvestment and Recovery Act (ARRA) of 2009. On Monday, June 15, the Conference Committee ***Rejected*** this proposal with a unanimous vote. *(Rumors, however, continue to circulate that this proposal may return.)*

Highway Users Taxes: On Thursday, June 11, the Conference Committee ***Adopted*** a DOF proposed to take $986.3 million of city and county shares of Highway User's Tax Account (HUTA) revenues in FY 2009-10, and $750 million per year ongoing to pay for transportation debt services. City attorneys believe this is unconstitutional.
(See attached link to League requested legal opinion that has been distributed to legislators and the Governor: http://www.cacities.org/HUTAopinion. See city-by-city estimated impacts here: http://www.californiacityfinance.com/HUTAprojFY10.pdf)

LAO had a counter-proposal to "borrow" 100 percent of these funds ($1.03 billion) from cities and counties, and repay them with interest within three years. Borrowing is permitted under Section 6, Article XIX of the California Constitution and League attorneys are reviewing potential legalities. Given the Conference Committee's decision to take these funds (above), this "borrowing" option is not currently on the table, but could re-emerge if the legal questions involving the HUTA-take gain traction.

Prop. 1B Transportation Funds: The Conference Committee ***Adopted*** LAO's proposal to offset local impacts via the release of the remaining $700 million in Prop. 1B local street and road funds (about $258 million of this amount is available for cities). Only cities that have not yet received their full Prop 1B local streets and roads allocation are eligible for these funds.

Prop. 42 — Sales Tax on Gas Revenues: The Conference Committee ***Rejected*** LAO's proposal to borrow 80 percent of Prop. 42 (sales tax on gas) funds for FY 2009-10. The state would repay these funds with interest within three years. Prop. 1A of 2006 added identical borrowing language for these funds as applies to local property taxes under Prop. 1A of 2004. DOF has not proposed to borrow these funds.

DOF proposes to defer payments to local governments for cash flow purposes during FY 2009-10. **(Open).**

Redevelopment: The Conference Committee ***Adopted*** trailer bill language from DOF that attempts to work around the recent successful lawsuit filed by the California Redevelopment Association against the state over the September 2008 budget proposal to take $350 million from redevelopment agencies. In addition to the language, the

committee also approved a proposal to take an additional $350 million from redevelopment agencies for both FY 09-10 and FY 10-11, for a three-year total of $1.050 billion. This proposal will likely trigger additional litigation.

Local Public Safety Funding — COPS/Booking Fees: COPS, Booking Fees and other local public safety programs are currently being funded by the new 0.15 percent increase in the Vehicle License Fee (VLF), producing approximately $500 million per year. This additional rate was adopted as part of the budget signed in February and is scheduled to end after FY 2010-11. LAO has proposed taking half of these revenues for the General Fund and cutting funding for local law enforcement grants. **(Open)**

Transit: DOF proposes the transfer of $336 million in transit spillover revenue to General Fund relief. Another proposal redirects $315 million in Public Transportation Account funds to pay for debt service on transit bonds. The Conference Committee ***Adopted*** this item.

State Funding Shifts through Fees:

- DOF proposes requiring the Department of Industrial Relations Division of Occupational Safety and Health (OSHA) and the Division of Labor Standards Enforcement to charge fees on employers. **A*dopted.***
- DOF also proposes requiring the Bureau of Forensic Services to charge fees to state and local agencies for services. This would have a statewide impact of $20 million and could mean significant costs for smaller communities that rely on these services. (Item 0820-001-0001) ***Adopted. Fee schedule to be developed. Report back in January.***

Other Public Safety DOF Proposals: (Still Open)

- *Corrections Policy Changes:* 1) Change sentencing options to require various crimes that can currently be prosecuted as felonies to only be punished as misdemeanors; 2) Seek additional savings through various changes to corrections policies; 3) Allow for early release and house arrest; 4) Eliminate most inmate and parolee rehabilitation programs. **(Open)**
- *Narcotics Enforcement:* Reducing funding for the Bureau of Narcotic Enforcement by $20 million. ***Adopted.***
- *Justice Action Grants:* Authority for CalEMA to distribute an additional $66 million in federal stimulus (JAG) grants. **(Open)**
- *Emergency Response Funding:* Discussions continue over the details of DOF's proposal to allocate $76 million from a new 4.8 percent surcharge on insurance policies to partially fund CAL Fire and local response agencies. Local agencies can receive reimbursement for costs incurred for responding to emergencies as part of the state's mutual aid system. ***Adopted*** in modified form, additional action regarding expenditure/allocation expected.

State Mandates: DOF proposes an additional $15 million (above the $142 million that was included in the FY 2009-10 budget adopted in February) to pay mandate claims. The scheduled $91 million payment, on the $900 million in pre-2004 mandate claims, will again be deferred. DOF also proposes to suspend 32 local government mandates. The Conference Committee ***Adopted*** the suspension of numerous mandates listed in

the attached document:
http://www.lao.ca.gov/handouts/state_admin/2009/Non_Education_Mandates_06_11_09.pdf

Several mandates, however, were either not suspended, or modified:

- Open Meeting Act, not suspended.
- Elections mandates, not suspended.
- Animal adoption, reduced to three days.
- Redrafted sexually violent predator mandate to align with Jessica's Law.
- Repealed crime victims mandate to conform to Marcy's Law.

Small Airport Grants: LAO proposes suspending $4 million in grants to small airports. ***Adopted***

Williamson Act: DOF proposes deleting $34.7 million in reimbursements for Williamson Act. The Conference Committee ***Adopted*** this item.

Housing: DOF proposes to provide authority to spend $129 million in federal ARRA funds for state CDBG, homeless prevention, and neighborhood stabilization programs. **(Still Open)**

State Parks: To avoid the need to close state parks, the Conference Committee ***Adopted*** a proposal to charge a $15 fee for a state parks pass on all motor vehicle registrations. This is to fund state parks and will permit every motor vehicle registered in California to have free entry into state parks.

Bottle Bill Program Deficit: On Monday, June 1, the Department of Conservation announced that the state's beverage container program has a negative balance of $157 million. This bottle bill program funds city and county grant payments for recycling (at $10 million annually) as well as the state's bottle and can CRV recycling program.

The administration's plan to address this massive deficit, submitted to the legislative budget committees this week, makes proportional cuts to the program. It also included a policy that states grants could only be given if the program had a surplus.

More Information: See attached link to all budget committee documents
http://sinet2.sen.ca.gov/budget/conf2009.html